

## PREAMBLE:

A representation by sortition is defined as “democratic” while representation by election is defined as “aristocratic”.

Sortition is a democratic instrument because this way people are represented by “his peers” while in an election system people are choosing for “the best” as a “leader” (= electoral aristocracy).

To illustrate the aristocratic nature (the best) of the electoral system, we can take the example of the buccaneers (maybe some romanticized)

A hundred years before the French Revolution, the buccaneer companies were run on lines in which liberty, equality and fraternity were the rule. In a buccaneer camp, the captain was elected and could be deposed by the votes of the crew. The crew, and not the captain, decided whether to attack a particular ship, or a fleet of ships.

The ancient Greeks (+/- 400 BC) used the electoral system for the designation of “the best”, namely to command the army. The legislative structures were based on democratic instruments, representation by sortition and the peoples assembly.

The electoral system for legislative structures mainly finds its origin in the Roman Republic \* 1.

The ECHR (Convention for the Protection of Human Rights and Fundamental Freedoms) only mentions the “right to free elections”. Democracy as a right is not mentioned throughout the convention. “Democratic elections” belongs to the misleading propaganda language of politicians and media.

Sortition is a democratic instrument which, together with other democratic instruments and elements (freedom of speech, freedom of assembly,..) can be deployed in a democracy.

## CRITERIA :

### 1 – Basic Criteria

Also, with sortition, the basic criteria, which are applicable in the referendum system stay valid:

- *Setting the political agenda by the citizens / initiative*
- *Information and debate – transparency of public data*
- *Decision*

### 2 – Sampling System

Sortition systems can be complex, this increase the manipulation possibilities and errors.

Even in simple transparent systems such as the mechanical lottery drum a bailiff is present. In the Netherlands (2014), there was a suspicion of manipulation in the digital lottery.

The choice of the chosen system, and the details of implementation, has to be justified in function of the application.

- The selected sample system must be simple (eg simple random sampling AES) and conducted in a professional manner.
- The sampling procedures must be supervised.

### 3 – Number of citizens appointed by sortition

A further criteria is the number of citizens appointed by sortition. This number will determine the margin of error, the reliability and representativeness of the panel appointed by sortition.

It may be that we pursue no representativeness for a particular application (eg G1000 Belgium: maximum diversity instead of representativity) or limited representativeness (eg Oregon Citizen Initiative Review: geographically and demographically representative).

Of interest is also the “rotation” which is a must in a democratic system. In turns govern and be governed is the essence in a democracy.

- Depending on the representativeness
- In function of the allowed margin of error on the results
- In function of the reliability of the results
- Depending on the desired rotation (large participation)
- A large number of participants will be less susceptible to coercion and corruption and will also increase the likelihood that efforts to manipulation be reported more quickly.
- The panel of citizens appointed by sortition has to be “*a true image of society*” as a whole.

A properly implemented system with between 400 and 600 citizens is usually sufficient to ensure reliable operation. If there are less people this has to be justified in detail.

#### **4 – Time the citizens appointed by sortition are active**

An activity of short duration has several advantages. Longer times will therefore has to be weighed against the pros and cons. (Short = a day or several days, long = example: a legislative term)

- Short period of time gives a great rotation and that way many participants.
- Long period of time gives greater manipulation capabilities and low rotation
- Long duration discriminates participants who can not afford a long absence, or do not wish to do so.
- Long period of time may have a higher professionalism as a result, it has to be considered whether this is an advantage or disadvantage. Higher professionalism means that the panel differs from an “image of society”.

#### **5 – Right to Decide**

With panels who have only advisory jurisdiction there is on average a participation rate of 2%. This means that if you ask 100 people to participate in such a panel, only 2 people will show up. This could not possibly be representative.

It has been proven that when citizens have effective decision making power they are more likely to take part in such initiatives.

In principle participation in a legislative panel appointed by sortition is obligatory (a civic duty). It will of course be difficult to enforce but there may be provided various measures that encourage participation (fee, assistance, motivation, ..). With voluntary participation, there is the risk of “professional participants” and (by civil society, businesses, interest groups, ..) paid participants.

This way, the “image of society”, which is the basis of the jury system, is no longer valid.

- It is of interest to increase the turnout and become really representative in order to speak of a democratic instrument.

#### **6 – Manipulation**

It would be an understatement to expect that the large financial and economic powers that now influence the political decisions would disappear when sortition is introduced in the political system.

We have to anticipate that these powers will be redirected in order to maintain power. We can look at a system that we know and has long demonstrated its reliability (Belgium: at least until the recent changes): the people jury system in the juridical system \* 2.

A jury of 12 citizens designated by sortition (from the electoral registers) will decide about guilt or innocence. In comparison with our northern neighbors (the Netherlands), where the courts judge only with professional judges, it appears that the jury system is certainly not inferior for the quality of justice. We also see that both parties (guilt and innocence) can call witnesses and experts, completely independent of each other.

Jury's with mixed systems composed of professionals and citizens appointed by sortition give disappointing results. This is not surprising, such a panel is not at all "an image of society".

- Avoiding manipulation by "independent neutral employees" who assist deliberation
- Determining which experts and interested parties has to be invited
- No composite panels of professional (ie politicians) and people appointed by sortition

## **7 – Special applications are experimenting with so-called "deliberative" panels.**

A system that is used is to divide a big panel appointed by sortition, who heard the experts and interested parties, in small groups who discuss among themselves, under the supervision of "neutral facilitators", the matters at hand. Then the whole group decide.

Although this system has advantages of deliberation and discussion, this system has major risks of manipulation. Especially if it is not about non-binding "recommendations" but about decisions where billions of Euro's (\$) may be involved (some examples of corruption in Belgium: army shells, Agusta army helicopters, special waste containers, windmills in the North Sea, ..). It will thus depend on the application what can and what can't work.

We note in this regard the appearance on the scene of the "participation industry" that accompanies in a professional way participative events (including universities). Hence also Terrill Bouricius in his design provides various "supervision Jury's".

One must also distinguish between the "satisfaction of the participants" and the "results" that depend on other parameters.

- Participants of panels appointed by sortition can, in principal, not discuss among themselves but just listen to the experts and stakeholders and vote afterwards.

**8 – One can also judge initiatives** (with or without sortition) on the basis of the following criteria: cost – used sampling system / type of representation – outcome

One will soon find out that retrieving these basic data is not easy.

-----  
One of the great advantages of referendums (citizens' initiative) is that all discussions and events take place in full public and are accessible to everyone. This freedom of participation and full disclosure we do not, or at least not to the same extent, find in the sortition system.

<http://www.steekproefcalculator.com/steekproefcalculator.htm>

\*1 <https://www.amazon.co.uk/Beasts-God-Democracy-Changed-Meaning/dp/1783605421>

\* 2 for what reason the French Revolution has established the jury system in criminal cases on september 3, 1791?

“Ce que caractérise la cour d’assises, c’est l’indépendance de cette juridiction. Elle offre la garantie que les jurés, en raison de la durée momentanée de leurs fonctions, n’abuseront pas de leur autorité.”

Translation:

“What this juridical system features is offering the independence of this form of justice. A guarantee that jurors, because of the short duration of their duties, will not abuse their authority, .”